



MDOT Utility Accommodation Guidance

Effective Date May 15, 2023

In accordance with State Transportation Commission Policy 10014

Development Services Division
Utility Coordination, Permits & Agreements Section

I. PURPOSE

To regulate the accommodation within state highway right-of-way of municipal utilities, private lines, and utility facilities, as defined in Part III hereof: this guidance shall also be the basis for the evaluation and approval by the Michigan Department of Transportation (MDOT) for requests to construct, maintain, or operate upon, over, across, or under state highways, private lines, and utility facilities as herein defined. This guidance is applicable to state highways under the jurisdiction of MDOT.

Federal and state statutes acknowledge that it is in the public interest for utility facilities to be accommodated on state highway right-of-way. MDOT has statutory authority to regulate utility accommodations within highway right-of-way through a permit process governed by *23 Code of Federal Regulations (CFR) Part 645* and state laws. Such use and occupancy shall not adversely affect highway traffic and safety, impair highway aesthetic quality, and shall not conflict with federal, state, and local laws, or regulations.

The criteria under which such facilities will be permitted on state highway right-of-way are in accordance with:

- American Association of State Highway and Transportation Officials' (AASHTO) publication *A Policy on the Accommodation of Utilities within Freeway Right-of-Way*, copyright October 2005 or current version.
- AASHTO publication *A Guide for Accommodating Utilities within Highway Right-of-Way*, copyright October 2005 or current version.
- Federal Highway Administration (FHWA) *Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects*, copyright January 2003 or current version.

In circumstances where differences arise between the above publications and this guidance, the conditions set forth in this guidance shall control.

It is not intended that this guidance serve as the basis for determining financial responsibility for replacing or adjusting facilities. This guidance is limited to matters that are the responsibility of MDOT as jurisdictional authority of the state highway system and its safe operation. This guidance will not be interpreted or applied in a manner in violation of, or inconsistent with, federal or state law.

IIA. FEDERAL STATUTE AND RULES - LEGAL AUTHORITY

Broadband Infrastructure Deployment, 23 CFR Part 645, Subpart B provides direction with respect to federal laws for utility accommodation in State jurisdictional highway right-of-way.

MDOT, in consultation with appropriate State of Michigan agencies, is identified as the “broadband utility coordinator” for Michigan, in compliance with 23 CFR Part 645, Subpart C. MDOT has designated the Development Services Division Administrator to be the broadband utility coordinator. This position is responsible for facilitating the broadband infrastructure right-of-way efforts within the State.

MDOT will utilize the information collected by the Michigan Public Service Commission on its Intrastate Telecommunications Service Providers website for the registration of broadband infrastructure entities, to be included in broadband infrastructure right-of-way facilitation efforts with the State.

MDOT, on an annual basis, will electronically notify broadband infrastructure entities, which are registered with the Michigan Public Service Commission as a broadband provider, of the State Transportation Improvement Program. Additional notifications will be provided as needed. In addition, MDOT will coordinate initiatives with other statewide telecommunication and broadband plans along with State and local transportation- and land-use plans, including strategies to minimize repeated excavations that involve the installation of broadband infrastructure in a right-of-way.

The State has no mandate or requirement to install or allow the installation of broadband infrastructure in a highway right-of-way. If MDOT chooses to provide for the installation of a broadband infrastructure in the right-of-way of an applicable federal-aid highway project, MDOT shall carry out appropriate measures to ensure that any existing broadband infrastructure entities are not disadvantaged, as compared to other broadband infrastructure entities.

IIB. STATE STATUTE-LEGAL AUTHORITY

The statutory authority of telegraph, telephone, power, and other public utility companies, cable television companies, broadband companies, and municipalities to construct and maintain facilities upon, over, across, or under state highway right-of-way emanates from [Act 368 of Public Acts of 1925, MCL 247.171 et seq.](#)

Wireless telecommunication service is not considered a public utility for the use of MDOT right-of-way.

The statutory authority of small cell wireless communications facilities within the right-of-way emanates from [Act 365 of Public Acts of 2018, MCL 460.1301 et seq.](#)

Wireless telecommunication macro tower sites within limited access right-of-way are allowed; however, they are not considered public utilities. Per a State of Michigan Department of Technology, Management and Budget Wireless Communication contract, with concurrence from FHWA, the towers are allowed to be within MDOT right-of-way that MDOT owns in fee simple.

III. DEFINITIONS

License - A companion document, which specifies a duration and fee, to a permit granted to occupy or engage in a specified activity within the right-of-way.

Limited Access Right-of-way - State highway Right-of-way that establishes a boundary over which the abutting property owners are denied any rights of direct access, ingress, or egress.

Municipal Utility - A utility owned and operated by a government agency having corporate status and usually powers of self-government (city, township, village, authorities, tribes, etc.) is considered a municipal utility.

Permit - A legal document used to grant permission to private, governmental, and public entities for occupying, constructing, operating, using, or maintaining specified operations or facilities within the state highway right-of-way.

Private Lines - Privately owned facilities that convey or transmit the commodities outlined in the definition of *Utility Facilities and/or Utilities* of this section but devoted exclusively to private use.

Public Utility - A utility meeting the criteria outlined in MDOT's [Utility Classification for Use of State Highway Right of Way](#) as verified against the Michigan Public Service Commission registry corresponding to the utility type.

Right-of-way - Real property or interests therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway under MDOT's jurisdiction, in which federal-aid or federal highway funds are or may be involved in any stage of development. This includes lands acquired for scenic areas adjacent to highways, rest areas, roadside parks, scenic turnouts or overlooks, and access to lakes and rivers.

State Highways - Highways, regardless of designation, under the jurisdiction of MDOT.

Utility Facilities and/or Utilities - Privately, publicly, or cooperatively owned lines, facilities, and systems, including accessory monitoring equipment, for producing, transmitting, or distributing communications, cable television, broadband, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems and street lighting systems, which directly or indirectly serve the public. The term "utility" shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

IV. APPROVAL

All installation, operation, and maintenance of private lines and utility facilities made on state highway right-of-way shall be subject to the approval of MDOT. If approved, the approval shall be granted in accordance with MDOT permit procedures unless otherwise authorized by agreement or property right. It is the responsibility of the party requesting use of the state highway right-of-way to apply for and obtain the necessary permits from MDOT.

To protect the state highway interest, MDOT will prescribe the following within the conditions of the permit:

- Specifications for applicant's proposed methods of installation.
- Requirements for preservation and restoration of highway facilities, appurtenances, natural features, and vegetation on the state highway right-of-way, including warranties on right-of-way structures.
- Limitations on the activities and maintenance of traffic control plans within the state highway right-of-way.

In addition to MDOT approval, the following uses of interstate limited access right-of-way shall be subject to review and approval by FHWA:

- Any utility or private line use not in accordance with this guidance.
- Breaches of interstate limited access right-of-way for the purpose of providing access adjacent to public or private lands.
- Situations for which a license is required.

V. REQUIREMENTS

1. Use of state highway right-of-way for any purpose shall require MDOT approval.
2. Consideration shall be given by MDOT to the effect of the requested occupancy and use of the state highway right-of-way on the following:
 - Structural integrity of the highway.
 - Reasonably safe operation, maintenance, and future use of the highway.
 - Highway aesthetic quality and reasonable protection of roadside vegetation.
 - Environmental impacts.
 - Costs and/or difficulty of highway construction, maintenance, and operation.
 - Complex engineered utility facilities (e.g., sanitary sewer pump houses, natural gas facilities housing valve and compression equipment, and like structures) are not allowed.
 - Utility attachments to MDOT structures will be subject to review and approval by MDOT on an individual basis. Attachments will only be approved if other reasonable and feasible alternatives are not available.

3. Facilities allowed on state highway right-of-way will be located in a manner that will not impair the highway or adversely affect highway or traffic safety.
4. Landscape plantings or natural trees of value shall be replaced with acceptable species of comparable value and at a location determined by MDOT.
5. Aboveground facilities shall comply with MDOT's current clear zone guidelines.
6. Longitudinal occupancy of limited access state highway right-of-way by aboveground facilities is prohibited.
7. The party requesting occupancy approval shall take, provide, and maintain all necessary precautions to prevent injury or damage to persons and property affected by operations and shall use traffic control devices that are in accordance with the current version of the *Michigan Manual of Uniform Traffic Control Devices*. MDOT may choose to include additional requirements in the permit.
8. Use of state highway right-of-way within areas of scenic enhancement, when such right-of-way has been acquired with federal funds, will comply with 23 *CFR* 645.209(h). Areas of scenic enhancement include scenic strips, overlooks, rest areas and landscaped areas, recreation areas, the state highway right-of-way adjacent thereto, and state highway right-of-way that passes through public parks and historic sites.
9. Where a utility has a compensable interest in the land occupied by its facilities and such land is to be jointly used for state highway purposes, MDOT and the utility shall agree, in writing, as to the obligations and responsibilities of each party.
10. Privately owned facilities may be allowed to cross state highway right of way, preferably under the highway and at a right angle. Crossings should be for the purpose of serving a general area rather than providing individual services, unless extenuating circumstances necessitate such crossings. If the facility crossing the state highway right of way is for a private service or individual use, it shall follow MDOT license guidelines.
11. Longitudinal occupancy of the free access right of way by privately owned facilities requires a public interest statement and one of the following: a finding by MDOT of significant economic hardship, unavailability of practicable alternatives, or other extenuating circumstances. Longitudinal occupancy of the limited access right of way will not normally be allowed by MDOT unless such occupancy pre-exists the establishment of the right of way or is necessitated as a result of a highway construction project.

12. Location of light standards and utility poles on free access highways will be governed by Chapter 9 of the MDOT Road Design Manual.
13. Maintenance of facilities within limited access highways shall be from city streets, county roads, or service roads, unless such alternatives are not practical as determined by MDOT. When access for facility maintenance must be from the limited access right-of-way, a permit shall be obtained from MDOT.
14. Longitudinal use of limited access right-of-way shall comply with the following:
 - Use will be limited to continuous type facilities that will not intermittently extend service outside the limited access right-of-way. Connections for service, distribution, or any other purpose shall be allowed at grade separations, interchanges, and the facility's entrance and exit point(s) to the limited access right-of-way.
 - Facilities shall be underground and placed in a manner that will not increase state highway maintenance and operation costs.
 - MDOT may require installation of multi-duct facilities for short distances where justified by field conditions.
 - The preferred location is within an area along the outer 15 feet of the state highway right-of-way.
 - MDOT may allow facilities to be placed in an alternate location such as outside the top of ditch slope or bottom of slope stake line, median, or as otherwise determined by MDOT.
 - The first facility shall be placed as close as practicable to the right-of-way line. Successive facilities shall be placed parallel and closer to the highway than the first facility.
 - Facilities shall be placed within 1½ feet, in either parallel direction of the permitted facility. Requests to space facilities greater than the 1 ½ foot spacing requirement may be allowed by MDOT and subject to applicable regulations and codes.
 - All facilities shall be placed using installation methods that minimize disruption to the limited access right-of-way.
 - The top of an access chamber (manhole) shall be at ground surface elevation and shall have the identification marking to indicate the utility ownership.
 - Aboveground facilities requiring regular maintenance shall be placed outside the limited access right-of-way.
15. Wireless telecommunication service (e.g., small cell wireless facilities, macro towers, etc.) is not considered a public utility for the use of MDOT right-of-way. However, MDOT may approve the construction and maintenance of wireless telecommunication facilities within MDOT right-of-way upon compliance with MDOT's guidelines. All requests for wireless telecommunications facilities shall

be processed through the State of Michigan's procedures.

16. Renewable energy facilities may be allowed to occupy state highway right-of-way by means of a permit and/or license agreement, dependent upon ownership (public or private), type of state highway right-of-way, and proposed facility location (aboveground or underground).

VI. DISCONTINUED USE OF FACILITIES

Aboveground Facilities - When a utility discontinues use of an aboveground facility, the facility and any colocations shall be entirely removed from the state highway right-of-way within one year. All costs are the responsibility of the utility.

Underground Facilities - When a utility discontinues use of an underground facility and the facility remains in the state highway right-of-way, the utility shall retain a record of the out-of-service facility and provide facility type and location information to MDOT when requested. MDOT may require out-of-service facilities to be completely removed, partially removed, capped, or filled based on MDOT's determination of how it impacts the safety and/or integrity of the highway or environment. All costs are the responsibility of the utility.

VII. EMERGENCY OPERATIONS

When a utility facility is damaged and constitutes a danger to life and/or property, the most expeditious means may be used to access the facility. The work is to be completed in a manner that will provide the public with maximum possible safety and minimize traffic disruption. Notice shall be provided to the nearest police authority and MDOT as soon as possible.